IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 325/2007
(M/s Shiv Shakti Builders Vs. State of Rajasthan & Ors.)

Date of Order : 22/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Satish Pachori for the petitioner.

BY THE COURT:-

Heard learned counsel for the petitioner at length.

The respondent Public Works Department (for short "the PWD" hereinafter) invited tenders for construction of the Court building for Civil Judge (Junior Division) and Judicial Magistrate, Begun. The petitioner claims to be registered as Class "C" contractor for the construction of buildings and roads, submitted a tender. It is stated by the counsel for the petitioner that the tender went in favour of the petitioner and an agreement to execute the work of construction of the Court building was executed. The contract envisages arbitration clause in case of dispute. It appears from the averments made in the writ petition and the various documents annexed thereto that the petitioner failed to complete the work as per the work order

and the contract and therefore, the respondent vide Annex.11 dated 3.8.2006 reminded the petitioner that even after expiry of the stipulated period for completion of the work, more than seven months have expired and building work has not been completed by the petitioner contractor and he was directed to complete the building work and hand over the same. Certain notices were also sent to him. Ultimately, by order Annex.16 dated 12.12.2006, the respondent stated that after giving the work order to the petitioner as per the contract agreement, the petitioner was to complete the work which he failed to complete by 12.8.2006 and as on 12.8.2006, he completed the work only for Rs. 22,38,368/- and thereafter left the work incomplete, therefore, has violated the contract agreement and in view of Section 2 of the Contract Agreement, the contract with the petitioner was withdrawn and remaining work would be got done from others by deducting 10% compensation/penalty at the risk and cost of the petitioner contractor.

Admittedly, there was a contract entered into between the petitioner and the respondent to execute the work for construction of the court building as noticed above and there is an arbitration clause. Thus, without exhausting the remedy before the arbitrator under the arbitration clause provided in the contract agreement, the petitioner has filed the instant writ petition. From the facts stated in the writ petition, I am satisfied

that it is clearly a case of contractual dispute and for determination of such dispute, in the contract itself an arbitration clause has been provided. Thus, the dispute arises out of the contract between the petitioner and the respondents for execution of the work of construction of court building and as per the documents annexed with the writ petition, the respondent came with a case that there is a breach of the contract and resultant liability of the petitioner contractor. The determination of such dispute essentially requires determination of the questions of fact about the liability for the breach of contract in not completing the work within the stipulated period as provided in the contract and amount of work done, the loss if any suffered by the respondent on account of delay in execution of work and subsequently not completing the work and the quantification of the amount of penalty, such questions cannot be determined in the writ jurisdiction, more particularly when alternative remedy before the Arbitrator as per the contract agreement has been provided. When there is specific alternative remedy provided under the contract agreement by way of disputes redressal forum for settlement of the dispute, there is no reason for the petitioner not following and adopting that remedy. While considering the similarly controversy,a Division Bench of this Court in M/s Hema Construction Vs. The State of Rajasthan and Ors. 2005 (2) WLC (Raj.), 222 held that dispute arising out in

execution of contract of road work involving liability for breach of contract which are disputed question of fact and the fact that in the contract agreement there is an arbitration clause applicable to the parties, such matters cannot be decided in the writ petition.

In this view of the matter, the writ petition stands dismissed. No order as to costs.

(H.R.PANWAR),J.

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